IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

CRL.A.No. 148 of 2004

SC.16/2001 of THE DISTRICT AND SESSIONS JUDGE (ADHOC) FAST TRACK COURT NO.1, MANJERI
CP.64/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, MANJERI

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APPELLANT:

MATHAI, C.NO.9239,
CENTRAL PRISON, KANNUR.

BY ADV. SRI.SAJEEV.T.P.

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

Crl.A.NO.148 OF 20O4

Dated this the 30th day of October, 2007

JUDGMENT

Koshy, J.

Appellant was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- for offence punishable under Section 302 of the Indian Penal Code. According to prosecution, at about 1 am on 4.6.1998, the accused with the intention to commit murder of his wife due to his suspicion in her chastity, hit on her head with an axe handle while she was sleeping in the house bearing NO.1/262 at Vettilappara and that she had instantaneously succumbed to her injuries. First information statement was given by PW8 police constable. Exhibit P1 is the first information statement. From the FI statement it can be gathered that a phone call was received in the police station that the accused has hit his wife and he is sitting inside the room without opening the door and he also told that he will open the door only if the police comes. Immediately as directed by the Sub Inspector of Police, PW8 went to the place at 3 'O' clock on 4.6.1998. When he reached the place, he saw a large number of people gathered there. The kitchen and the room near

the kitchen were bolted inside. When he requested for opening the door after stating that he is police, the accused opened the door and stated that he killed her wife. When he went inside the room, he saw that the wife of the accused was lying dead in the bed with bleeding injuries. A kerosene lamp was burning there and near the kitchen door blood stained axe (MO1) was also there. He also has taken statements from PW1, son of the deceased and he stated that he was also staying in the house with his wife PW2 and sister PW3. By 9 'O' clock they slept. His father and mother were sleeping in the room near the kitchen and in another room his sister and children were sleeping. At 12 'O' clock he was hearing the talk of mother and father. At 1 'O' clock he heard a sound. He called the mother for enquiring the matter, but she did not reply. By the time his wife and sister woke up and requested to open the door. But there was no response. When he looked through the window, he saw his father standing with an axe and mother was lying with injuries near and there was bleeding from right ear. There was no movement for mother. He requested his father to open the door. Then he stated that he killed her and only when police comes he will open the door. He, therefore, went to the neighbouring house and all of them came there and requested to open the door and his father stated that he

will open the door only if the police comes. Then somebody telephoned to the police station and only after police came the door opened. It is also stated by the son of the accused that there was frequent quarrel between father and mother regarding doubting the chastity of mother. It is seen that the police constable went to the place of incident at 3 'O' clock and immediately the first information statement was given. Having got a telephone call from the place of incident, he went there on the instruction given by the Sub Inspector and FI statement was taken within two hours of the incident. There is nothing to disbelieve PW8 as he saw the accused and deceased in the bed room in their house and the door was bolted from inside. PW1, son of the accused, gave a similar statement. PW3, though stated in accordance with prosecution story, stated that she saw the door locked from outside also and she was declared hostile. The neighbours, Pws 5, 6 and 7 who also corroborated a story as deposed by PW1.

2. The prosecution case is also supported by medical evidence. Exhibit P3 postmortem certificate issued by PW4 also shows that death was homicidal. The following antemortem injuries were noted in Exhibit P3:

> "1. Lacerated wound 3.5 (vertical) x 1.8 x 3 cm behind right ear close to ear lobe. Beneath this injury right temporal bone fractured into multiple pieces for an area 5 x 4.5 cm extending to parietal bone and then to occipital bone 17 x 8 cm. Fracture continued to middle cranial fossa and then to left temporal bone.
>
> 2. Lacerated wound 1.5 x 2 cm on middle of right ear lobe, 1.7 cm above lower end.
>
> 3. Lacerated wound 1 x 03 cm bone deep on right side of head 3.5 cm behind injury No.1.
>
> 4. Contusion 7 x 4 cm on right side of face and head involving ear.
>
> 5. Subdural bleeding 5 x 3 cm on right frontal temporal and parietal lobes of brain.
>
> 6. Subarachnoid bleeding in thin film on right temporal, pareietal and left temporal lobes of brain."

MO1 was also seized by PW14 from the bed room of the house. Exhibit P8 report shows that it was stained with human blood. In 313 statement the defence of the accused was that he was inimical towards his son. But he has no case that the son has inflicted injury on the deceased, atleast by mistake. He also stated that on the crucial night he could not sleep on his own cot as it was occupied by his daughter who had visited them and stayed for few days. No evidence was adduced to that effect also. Motive was also proved by son, daughter-in-law and neighbours that there were frequent

quarrels. The accused was taken into custody from the bed room. When wife died in the bed room where accused and wife were sleeping, it is for him to explain how death occurred. In this connection we refer to the decision of the Supreme Court in ***Swamy Shraddananda v. State of Karnataka*** (2007(3) KLT SN 49 SC). Here accused had no explanation at all for the homicidal death of his wife

In these circumstances, we are of the view that the prosecution was able to prove the case beyond reasonable doubt and only hypothesis possible is that the accused caused murder of his wife in privacy of their bed room. We agree with the findings of the trial Judge and there is no ground for interfering with the conviction and sentence passed against the accused. The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

Crl.A.NO.148 OF 2004

JUDGMENT

30.10.2007